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HOUSE BILL 493

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; EXPANDING THE ELEMENTS OF THE OFFENSE OF AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS-- AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS-- PENALTY. --

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the

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1 influence of any drug to a degree that renders him incapable of
2 safely driving a vehicle to drive a vehicle within this state.

3 C. It is unlawful for:

4 (1) a person who has an alcohol concentration
5 of eight one hundredths or more in his blood or breath to drive
6 a vehicle within this state; or

7 (2) a person who has an alcohol concentration
8 of four one hundredths or more in his blood or breath to drive
9 a commercial motor vehicle within this state.

10 D. Aggravated driving while under the influence of
11 intoxicating liquor or drugs consists of a person who:

12 (1) has an alcohol concentration of sixteen
13 one hundredths or more in his blood or breath while driving a
14 vehicle within this state;

15 (2) has caused bodily injury to a human being
16 as a result of the unlawful operation of a motor vehicle while
17 driving under the influence of intoxicating liquor or drugs;

18 [~~or~~]

19 (3) refused to submit to chemical testing, as
20 provided for in the Implied Consent Act, and in the judgment of
21 the court, based upon evidence of intoxication presented to the
22 court, was under the influence of intoxicating liquor or drugs;
23 or

24 (4) while under the influence of intoxicating
25 liquor or any drug to a degree that renders the person

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1 incapable of safely driving a vehicle, drives a vehicle within
2 this state with one or more passengers who are less than
3 eighteen years of age.

4 E. A person under first conviction pursuant to this
5 section shall be punished, notwithstanding the provisions of
6 Section 31-18-13 NMSA 1978, by imprisonment for not more than
7 ninety days or by a fine of not more than five hundred dollars
8 (\$500), or both; provided that if the sentence is suspended in
9 whole or in part or deferred, the period of probation may
10 extend beyond ninety days but shall not exceed one year. Upon
11 a first conviction pursuant to this section, an offender may be
12 sentenced to not less than forty-eight hours of community
13 service or a fine of three hundred dollars (\$300). The
14 offender shall be ordered by the court to participate in and
15 complete a screening program described in Subsection K of this
16 section and to attend a driver rehabilitation program for
17 alcohol or drugs, also known as a "DWI school", approved by the
18 bureau and also may be required to participate in other
19 rehabilitative services as the court shall determine to be
20 necessary. In addition to those penalties, when an offender
21 commits aggravated driving while under the influence of
22 intoxicating liquor or drugs, the offender shall be sentenced
23 to not less than forty-eight consecutive hours in jail. If an
24 offender fails to complete, within a time specified by the
25 court, any community service, screening program, treatment

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1 program or DWI school ordered by the court or fails to comply
2 with any other condition of probation, the offender shall be
3 sentenced to not less than an additional forty-eight
4 consecutive hours in jail. Notwithstanding any provision of
5 law to the contrary, if an offender's sentence was suspended or
6 deferred in whole or in part, and the offender violates any
7 condition of probation, the court may impose any sentence that
8 the court could have originally imposed and credit shall not be
9 given for time served by the offender on probation. Any jail
10 sentence imposed pursuant to this subsection for failure to
11 complete, within a time specified by the court, any community
12 service, screening program, treatment program or DWI school
13 ordered by the court or for aggravated driving while under the
14 influence of intoxicating liquor or drugs shall not be
15 suspended, deferred or taken under advisement. On a first
16 conviction pursuant to this section, any time spent in jail for
17 the offense prior to the conviction for that offense shall be
18 credited to any term of imprisonment fixed by the court. A
19 deferred sentence pursuant to this subsection shall be
20 considered a first conviction for the purpose of determining
21 subsequent convictions.

22 F. A second or third conviction pursuant to this
23 section shall be punished, notwithstanding the provisions of
24 Section 31-18-13 NMSA 1978, by imprisonment for not more than
25 three hundred sixty-four days or by a fine of not more than one

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1 thousand dollars (\$1,000), or both; provided that if the
2 sentence is suspended in whole or in part, the period of
3 probation may extend beyond one year but shall not exceed five
4 years. Notwithstanding any provision of law to the contrary
5 for suspension or deferment of execution of a sentence:

6 (1) upon a second conviction, an offender
7 shall be sentenced to a jail term of not less than ninety-six
8 consecutive hours, forty-eight hours of community service and a
9 fine of five hundred dollars (\$500). In addition to those
10 penalties, when an offender commits aggravated driving while
11 under the influence of intoxicating liquor or drugs, the
12 offender shall be sentenced to a jail term of not less than
13 ninety-six consecutive hours. If an offender fails to
14 complete, within a time specified by the court, any community
15 service, screening program or treatment program ordered by the
16 court, the offender shall be sentenced to not less than an
17 additional seven consecutive days in jail. A penalty imposed
18 pursuant to this paragraph shall not be suspended or deferred
19 or taken under advisement; and

20 (2) upon a third conviction, an offender shall
21 be sentenced to a jail term of not less than thirty consecutive
22 days and a fine of seven hundred fifty dollars (\$750). In
23 addition to those penalties, when an offender commits
24 aggravated driving while under the influence of intoxicating
25 liquor or drugs, the offender shall be sentenced to a jail term

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1 of not less than sixty consecutive days. If an offender fails
2 to complete, within a time specified by the court, any
3 screening program or treatment program ordered by the court,
4 the offender shall be sentenced to not less than an additional
5 sixty consecutive days in jail. A penalty imposed pursuant to
6 this paragraph shall not be suspended or deferred or taken
7 under advisement.

8 G. Upon a fourth conviction pursuant to this
9 section, an offender is guilty of a fourth degree felony and,
10 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
11 shall be sentenced to a term of imprisonment of eighteen
12 months, six months of which shall not be suspended, deferred or
13 taken under advisement.

14 H. Upon a fifth conviction pursuant to this
15 section, an offender is guilty of a fourth degree felony and,
16 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
17 shall be sentenced to a term of imprisonment of two years, one
18 year of which shall not be suspended, deferred or taken under
19 advisement.

20 I. Upon a sixth conviction pursuant to this
21 section, an offender is guilty of a third degree felony and,
22 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
23 shall be sentenced to a term of imprisonment of thirty months,
24 eighteen months of which shall not be suspended, deferred or
25 taken under advisement.

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1 J. Upon a seventh or subsequent conviction pursuant
2 to this section, an offender is guilty of a third degree felony
3 and, notwithstanding the provisions of Section 31-18-15 NMSA
4 1978, shall be sentenced to a term of imprisonment of three
5 years, two years of which shall not be suspended, deferred or
6 taken under advisement.

7 K. Upon any conviction pursuant to this section, an
8 offender shall be required to participate in and complete,
9 within a time specified by the court, an alcohol or drug abuse
10 screening program approved by the department of finance and
11 administration and, if necessary, a treatment program approved
12 by the court. The requirement imposed pursuant to this
13 subsection shall not be suspended, deferred or taken under
14 advisement.

15 L. Upon a second or third conviction pursuant to
16 this section, an offender shall be required to participate in
17 and complete, within a time specified by the court:

18 (1) not less than a twenty-eight-day
19 inpatient, residential or in-custody substance abuse treatment
20 program approved by the court;

21 (2) not less than a ninety-day outpatient
22 treatment program approved by the court;

23 (3) a drug court program approved by the
24 court; or

25 (4) any other substance abuse treatment

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1 program approved by the court.

2 The requirement imposed pursuant to this subsection shall
3 not be suspended, deferred or taken under advisement.

4 M Upon a felony conviction pursuant to this
5 section, the corrections department shall provide substance
6 abuse counseling and treatment to the offender in its custody.
7 While the offender is on probation or parole under its
8 supervision, the corrections department shall also provide
9 substance abuse counseling and treatment to the offender or
10 shall require the offender to obtain substance abuse counseling
11 and treatment.

12 N. Upon a first conviction for aggravated driving
13 while under the influence of intoxicating liquor or drugs
14 pursuant to the provisions of Subsection D of this section, as
15 a condition of probation, an offender shall be required to have
16 an ignition interlock device installed and operating for a
17 period of one year on all motor vehicles driven by the
18 offender, pursuant to rules adopted by the bureau. Unless
19 determined by the sentencing court to be indigent, the offender
20 shall pay all costs associated with having an ignition
21 interlock device installed on the appropriate motor vehicles.
22 If an offender drives a motor vehicle that does not have an
23 ignition interlock device installed on the motor vehicle, the
24 offender may be in violation of the terms and conditions of his
25 probation.

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1 0. Upon a first conviction for driving while under
2 the influence of intoxicating liquor or drugs pursuant to the
3 provisions of Subsection A, B or C of this section, as a
4 condition of probation, an offender may be required to have an
5 ignition interlock device installed and operating for a period
6 of one year on all motor vehicles driven by the offender,
7 pursuant to rules adopted by the bureau. Unless determined by
8 the sentencing court to be indigent, the offender shall pay all
9 costs associated with having an ignition interlock device
10 installed on the appropriate motor vehicles. If an offender
11 drives a motor vehicle that does not have an ignition interlock
12 device installed on the motor vehicle, the offender may be in
13 violation of the terms and conditions of his probation.

14 P. Upon any subsequent conviction pursuant to this
15 section, as a condition of probation, a subsequent offender
16 shall be required to have an ignition interlock device
17 installed and operating for a period of at least one year on
18 all motor vehicles driven by the subsequent offender, pursuant
19 to rules adopted by the bureau. Unless determined by the
20 sentencing court to be indigent, the subsequent offender shall
21 pay all costs associated with having an ignition interlock
22 device installed on the appropriate motor vehicles. If a
23 subsequent offender drives a motor vehicle that does not have
24 an ignition interlock device installed on the motor vehicle,
25 the subsequent offender may be in violation of the terms and

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1 conditions of his probation.

2 Q. In the case of a first, second or third offense
3 under this section, the magistrate court has concurrent
4 jurisdiction with district courts to try the offender.

5 R. A conviction pursuant to a municipal or county
6 ordinance in New Mexico or a law of any other jurisdiction,
7 territory or possession of the United States or of a tribe,
8 when that ordinance or law is equivalent to New Mexico law for
9 driving while under the influence of intoxicating liquor or
10 drugs, and prescribes penalties for driving while under the
11 influence of intoxicating liquor or drugs, shall be deemed to
12 be a conviction pursuant to this section for purposes of
13 determining whether a conviction is a second or subsequent
14 conviction.

15 S. In addition to any other fine or fee that may be
16 imposed pursuant to the conviction or other disposition of the
17 offense under this section, the court may order the offender to
18 pay the costs of any court-ordered screening and treatment
19 programs.

20 T. As used in this section:

21 (1) "bodily injury" means an injury to a
22 person that is not likely to cause death or great bodily harm
23 to the person, but does cause painful temporary disfigurement
24 or temporary loss or impairment of the functions of any member
25 or organ of the person's body;

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(2) "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(b) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(c) is designed to transport sixteen or more passengers, including the driver; or

(d) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law; and

(3) "conviction" means an adjudication of guilt and does not include imposition of a sentence."

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.